CASE NO. 17-71353 [CONSOLIDATED WITH 17-73379]

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner/Respondent,

v.

CAESARS ENTERTAINMENT D/B/A RIO ALL-SUITES HOTEL AND CASINO,

Respondent,

and

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO,

Intervenor.

ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD CASE NO. 362 N.L.R.B. NO. 190

OPPOSITION TO MOTION OF THE NATIONAL LABOR RELATIONS BOARD FOR PARTIAL REMAND AND PARTIAL SUMMARY JUDGMENT

> David A. Rosenfeld, Bar No. 058163 Caren P. Sencer, Bar No. 233488 WEINBERG, ROGER & ROSENFELD A Professional Corporation 1001 Marina Village Parkway, Suite 200 Alameda, California 94501 Telephone (510) 337-1001 Fax (510) 337-1023

Attorneys for *Intervenor*, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

- 1. International Union of Painters and Allied Trades District Counsel, 15, Local 159, AFL-CIO, Intervenor in Case No. 17-71353 and Petitioner in Case No. 17-73379, hereby opposes the National Labor Relations Board's motion for partial remand and partial summary enforcement.
- 2. The Board has already rejected a similar effort by the employer. That motion for reconsideration was filed on December 18, 2017, and is attached as Exhibit A to this opposition. That motion was immediately rejected by the Board as untimely. *See* NLRB Executive Secretary Office Letter (Dec. 19, 2017), attached as Exhibit B. Notably, in the letter from the Executive Secretary, the Board took the position:

Under the clear terms of Section 10(e) of the Act, the Board ceased to have jurisdiction over the case at that point [when the administrative record was filed]. The Board accordingly has no jurisdiction to entertain your motion and therefore it will not be forwarded to the Board for consideration.

The Board, thus, has already ruled that it has no jurisdiction, even when faced with the same request by the employer. The effort now by the General Counsel to seek a similar remand should be rejected. The request by the General Counsel is directly contrary to the Board's ruling rejecting the same motion by the employer.

3. There is no ruling or order by the Board that would support this request for remand. Presumably, if the Board believed that remand was appropriate, it, as the Agency, would have issued an order or ruling requesting remand. There is no evidence that it has issued any such order or other document confirming that it wishes this case remanded.

Here, it appears at best this is the suggestion of its counsel. The law, however, is clear that it requires Board action, not the suggestion of the Board's counsel before the Board itself may take action. This Court cannot rely upon the suggestion of counsel, absent an order by the Board itself, indicating that it wants

this case remanded. *See NLRB v Food Store Emps., Local 347*, 417 U.S. 1 (1974), and *Hosp. & Serv. Emps. Union, Local 399 v. NLRB*, 743 F.2d 1417, 1427 (9th Cir. 1984).

Here, it is particularly appropriate to make this argument since the Board composition has changed after the Board issued the Decision on which the Board relies, *Boeing Co.*, 365 N.L.R.B. No. 154 (Dec. 14, 2017). At the time that Decision was reached, there were five members of the Board. The Board is now reduced to four members, two of whom were opposed to the Board's decision in *Boeing Co.* and two of whom supported it. Thus it isn't clear that the continuing four member Board approved this request for remand which effectively seeks to have the new rationale in *Boeing Co.* applied to this case. Absent proof that the Board has actually issued an order seeking remand, the Court should deny the motion.

- 4. This motion should be denied because the Petitioner and Intervenor have filed a motion for reconsideration in the *Boeing Co.* case. As noted, the *Boeing Co.* case is the basis of the General Counsel's request that this case be remanded. Here, the International Union of Painters, District Council 15, Local 159 has filed a motion to intervene in the *Boeing Co.* case and to seek reconsideration of that Decision. A copy of the Union's motion is attached as Exhibit C. So far the Board has not ruled on the motion.
- 5. This motion raises a number of issues. First, as it points out, the Board in the *Boeing Co.* case purported to overrule the Board's Decision in *this case* without granting due process or notice to the Union to oppose that Decision. Second, Member Emanuel was a member of the five member Board that issued the *Boeing Co.* Decision. As that motion makes clear, Member Emanuel could not participate because his former law firm, Littler Mendelson, had represented the parent company of the employer in this case. Moreover, as the motion points out,

Member Emanuel's former firm, Littler Mendelsohn, was conflicted from participating in the *Boeing Co.* case because it had represented the Boeing Company. Thus, there is a conflict of interest regarding Member Emanuel's involvement in the *Boeing Co.* case, so long as it affected, as it did, this case pending in this Court. Until the Board resolves the motion for reconsideration, this motion in this case is premature.

- 6. Member Emanuel cannot be involved and must recuse himself from consideration of any motion or other issue in this case. As noted in the attachments to Exhibit C, his law firm represented the employer and/or its parent companies. Thus, he is conflicted from being involved in this Decision, including whether this case should be remanded back to the Board for reconsideration.
- 7. Although *Boeing Co.* purports to be retroactive "to all other pending cases" (365 N.L.R.B. No. 154, slip op. at 17), that retroactivity cannot apply to this case. Under the Board's reading of "retroactivity," the *Boeing Co.* case would be applied to all cases no matter how old and irrespective of the procedural posture of the case. Employers and unions under the Board's reading¹ of retroactivity could seek to have the *Boeing Co.* rationale applied to any case, even if it goes back to the initial date of the *Lutheran Heritage Village-Livonia*, 343 N.L.R.B. 646 (2004), standard. That rationale cannot apply in this case for the reasons argued in Paragraph 2, above. *See* Exhibit A.

The Board essentially concedes that, because this case is in this Court and the record has been filed, it has no jurisdiction over the case. It is not "pending" in any sense before the Board. It may be pending before this Court, but it is final as to the Board. The Board would have this Court unwind that finality and then

¹ This is the reading of the phrase by Board counsel and not the Board. Until the Board clarifies its meaning, the attempt by its counsel to expand the meaning should be rejected. *Hosp. & Serv. Emps. Union, Local 399. v. NLRB*, 743 F.2d 1417.

attempt to apply its definition of retroactivity to the case later. The Board offers no support for the notion that an administrative agency can unwind a final decision in another case. As noted, this argument would unwind every case decided since at least 2004, relying on *Lutheran-Heritage Village Livonia*, 343 N.L.R.B. 646. In summary, then, even though *Boeing Co.* may be retroactive to "all pending cases," that does not apply to a case that is final as to the Board and over which the Board has no jurisdiction because the record has been filed in this Court.

- 7. The Board found a confidentiality rule, appearing at page 2.21 of the handbook, to be unlawful. *See* Decision of Board 2-3. As the Board notes, the Board has long held that such confidentiality rules are unlawful. The Decision in this case will not change, even based on the *Boeing Co.* case. The Board's motion to remand for reconsideration of this rule is unwarranted. The Decision in the *Boeing Co.* case will not affect the outcome.
- 8. The remand motion is a veiled attempt to preclude the Union from pursuing its Petition for Review. As the Board's motion notes, the Union filed a timely Petition for Review, which, in part, challenges the Board's failure to find certain contested rules unlawful. If the Court remands, the Court should remand everything except the uncontested rule for consideration to the Board. Unless this Court specifically remands those rules that were not found unlawful, the Board will take the position that those rules were not remanded, and reconsideration of those rules will not be before it. If the Court remands any part, it must remand everything so that the Board may consider everything, not just the rules that the Board found to be unlawful and that the General Counsel now contends may be governed by the *Boeing Co.* case.

To be clear, then, any remand must encompass *all aspects of the case*, except the one uncontested rule, including those rules that were not found to be

unlawful, as well as the Union's challenge to the extent and appropriateness of the remedy.

9. The Board does not seek remand of the one rule that the employer does not contest. On that issue, the Union agrees that the Board's Order should be enforced in full, as to that Order with the requested remedy as to that unlawful rule.

Dated: February 14, 2018 Respectfully Submitted

/s/ David A. Rosenfeld

By: David A. Rosenfeld
Caren P. Sencer
WEINBERG, ROGER & ROSENFELD

A Professional Corporation

Intervenor, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

143309\955082

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g)(1), Proposed Intervenor certifies that Intervenor's **OPPOSITION TO MOTION OF THE** NATIONAL LABOR RELATIONS BOARD FOR PARTIAL REMAND **AND PARTIAL SUMMARY JUDGMENT** contains 1,416 words of proportionately-spaced, 14 point type, and that the word processing system used was Microsoft Word 2010.

Respectfully Submitted Dated: February 14, 2018

/s/ David A. Rosenfeld
David A. Rosenfeld By: Caren P. Sencer

WEINBERG, ROGER & ROSENFELD A Professional Corporation

Intervenor, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, **AFL-CIO**

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EXHIBIT A

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 28

CAESARS ENTERTAINMENT CORP. D/B/A RIO ALL-SUITES HOTEL AND CASINO)	
Respondent,)	
and)	
INTERNATIONAL UNION OF)	Case No. 28-CA-060841
PAINTERS AND ALLIED TRADES,)	
DISTRICT COUNCIL 15, LOCAL 19)	
AFL-CIO)	
)	
Charging Party.)	
	_ز	

MOTION FOR RECONSIDERATION OR REOPENING THE RECORD AND REHEARING

Respondent Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino ("Rio" or the "Company") requests that the National Labor Relations Board ("Board" or "NLRB") reconsider its original order in this case following the Board's intervening decision in *The Boeing Company*, slip op. (NLRB Dec. 14, 2017) that not only overruled a portion of the Board's original order in this case, but also abandoned the legal standard under which the entire case was decided and retroactively adopted a new standard. Based on this new legal standard and the decision to overrule a portion of the original order, and pursuant to the NLRB Rules and Regulations § 102.48(d)(1), the Board's original order is inappropriate.

I. BACKGROUND AND PROCEDURAL HISTORY

Rio is one of several gaming and hospitality properties in Las Vegas, Nevada that are owned and operated by Caesars Entertainment Corporation. The Rio property employs more than 3,000 employees. All 3,000 employees receive and acknowledge the same employee handbook. The handbook governs the terms and conditions of employment, in some part, for Rio's total workforce.

The International Union of Painters and Allied Trades, District Council 15, Local 19 AFL-CIO ("Local 19") does not represent Rio employees, but nonetheless challenged ten rules in the handbook by filing a variety of unfair labor practice charges.

The Board subsequently filed a complaint asserting much the same charges. In its complaint, the Board alleged that Rio violated section 8(a)(1) of the Act by restricting, among other things, audiovisual recording in the workplace, disclosure of certain confidential information to the public, walking off the job during shifts, and using the Company's e-mail system and other computer resources for unapproved non-business purposes.

After holding a hearing, the ALJ sustained almost none of the Board's charges. In a partially divided decision, the Board reversed the ALJ's rulings on both the no-recording and confidentiality rules. As to the no-recording rules, the majority found that "photographing and videotaping is protected by Section 7 when employees are acting in concert for their mutual aid," and then concluded that reasonable employees would read the rules to restrict section 7 activity. The Board made much the same finding with respect to Rio's confidentiality rule, applying its decision in Martin Luther Mem'l Home, Inc. d/b/a Lutheran Heritage Village-Livonia ("Lutheran Heritage"), 343 NLRB 646 (2004), to find that the rule would be read by a reasonable employee as restricting section 7 activity. The portion of the case involving Rio's e-mail policy was remanded to an ALJ and has yet to be decided by the Board.

Nearly two years after the original order issued, the Board filed an application for enforcement in the United States Court of Appeals for the Ninth Circuit. Meanwhile, the Board decided *The Boeing Company*, a case involving a challenge to a similar no-recording rule. This time, the Board not only found that the no-recording rule was lawful, but also overruled its earlier finding in this case that "a similar rule was unlawful." *The Boeing Company*, slip op. at 5 n.12 (NLRB Dec. 14, 2017). According to the Board, the "majority in *Rio All-Suites Hotel* improperly limited [an earlier Board decision] *Flagstaff* to the facts of that case and failed to give appropriate

weight to the casino operator's interests in 'safeguarding guest privacy and the integrity of the Respondent's gaming operations." *Id.*, slip op. at 19 n.89. In overruling the Board's finding as to the no-recording rule in this case, the Board also adopted a new standard for evaluating all facially neutral handbook rules, replacing *Lutheran Heritage*. The new standard asks whether the rule, "when reasonably interpreted, would potentially interfere with Section 7 rights," and requires the Board to "evaluate two things: (i) the nature and extent of the potential impact on NLRA rights, *and* (ii) legitimate justifications associated with the requirement." *Id.*, slip op. at 14. This standard, the Board concluded, will apply "retroactively . . . to all pending cases." *Id.*, slip op. at 17.

II. THE BOARD SHOULD TAKE EXCLUSIVE JURISDICTION TO RECONSIDER THE CASE UNDER THE RETROACTIVELY APPLIED *BOEING* STANDARD

Motions for reconsideration should be granted where an intervening decision rendered the Board's original order inappropriate. See R&H Masonry Supply, Inc., 258 NLRB 1220, 1221 (1981) (modifying original order to delete language no longer necessary following intervening adjudication). The Board has not considered any of the allegations in the original complaint under the retroactively applied Boeing test. Cf. Kahn's & Co., 256 NLRB 930, 931 (1981) (reconsideration appropriate where substantial issue not previously considered by Board in issuing its original decision and order). Because the Board adopted the new test after issuing the original order in this case and decided to apply that test retroactively, the test's application was not even potentially at issue during the hearing or Board proceedings in this case. See Detroit Newspaper Agency, 361 NLRB 799, 800 (1999) (reconsideration appropriate where matter was not potentially at issue during trial). With the Board's intervening decision, it is only logical that the Board take exclusive jurisdiction and reconsider its original order because, most importantly, the Board decided to adopt and retroactively apply a new legal that governs every aspect of the case.

The Board's new standard applies to all handbook rules that potentially interfere with section 7 activity. See Boeing, slip op. at 19. The Board's original order applied the now-abandoned Lutheran Heritage standard in finding that three handbook rules constituted unlawful

interference with protected rights in violation of section 8(a)(1) of the Act. The Board's finding with respect to one such rule—Rio's restriction on recording—was expressly and categorically overruled. See Boeing, slip op. at 19 n.89. In addition, and by the Board's own terms, the remaining two rules must be reviewed under the new Boeing standard because the complaint in this case alleges that they interfere with section 7 rights and that new standard is not only meant to determine whether they do, but it also applies retroactively to the original order in this case that has not yet been enforced and is therefore still pending.

III. CONCLUSION

For these reasons, Rio requests that the Board take exclusive jurisdiction to reconsider its original decision in this case, allowing the parties to fully brief the issues under the retroactive new standard, or, alternatively, order that the record be reopened for further factfinding pursuant to the Board's intervening decision in *Boeing*. Given that the Board's enforcement application is subject to a briefing schedule with a deadline in ten days, Rio requests that the Board decide this motion expeditiously to avoid duplicative filings.

Respectfully submitted this 18th day of December, 2017.

By:

Taumana D. Lavian

Lawrence D. Levien James C. Crowley

AKIN GUMP STRAUSS HAUER & FELD, LLP

1333 New Hampshire Avenue, NW

Washington, DC 20036 Telephone: (202) 887-4000

Fax: (202) 887-4288

Counsel for Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino

CERTIFICATE OF SERVICE

This is to certify that the undersigned caused to be served on December 18, 2017, a copy of the MOTION FOR RECONSIDERATION OR REOPENING THE RECORD AND REHEARING via U.S. mail to the following:

Cornele A. Overstreet Regional Director National Labor Relations Board, Region 28 2600 North Central Avenue, Suite 1400 Phoenix, AZ 85004-3099

Linda Dreeben Attn. Usha Dheenan and Eric Weitz National Labor Relations Board 1015 Half Street, SE Washington, D.C. 20570

Lawrence D. Levien

AKIN GUMP STRAUSS HAUER & FELD LLP 1333 New Hampshire Ave., N.W. Washington, DC 20036 (202) 887-4000 (telephone) (202) 887-4288 (facsimile)

Counsel for Caesars Entertainment Corporation d/b/a Rio All-Suites Hotel and Casino Case: 17-71353, 02/14/2018, ID: 10764286, DktEntry: 41, Page 14 of 74

EXHIBIT B

Case: 17-71353, 02/14/2018, ID: 10764286, DktEntry: 41, Page 15 of 74



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the Executive Secretary 1015 Half Street, SE Washington, DC 20570 Telephone: 202-273-1949

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December 19, 2017

Lawrence D. Levien James C. Crowley Akin Gump Strauss Hauer & Feld, LLP 1333 New Hampshire Avenue, NW Washington, DC 20036

Re: Caesars Entertainment Corp. d/b/a RIO All-Suites Hotel and Casino

Case 28-CA-060841

Dear Mr. Levien and Mr. Crowley:

This letter acknowledges receipt of the Respondent's Motion for Reconsideration or Reopening the Record and Rehearing, filed with the Board on December 18, 2017 in the subject case.

Section 102.48(c)(2) of the Board's Rules and Regulations provides that any motion for reconsideration of a Board decision shall be filed within 28 days, or such further period as may be allowed, after service of the decision. Respondent's motion seeks reconsideration of the Board's Decision and Order which was issued on August 27, 2015. As stated above, the motion for reconsideration here was filed on December 18, 2017, more than two years after the issuance of the Board's decision in this matter. Accordingly, the motion for reconsideration is untimely.

Moreover, this case is currently pending in the United States Court of Appeals for the Ninth Circuit on the application of the National Labor Relations Board to enforce the Board's August 27, 2015 Decision and Order (362 NLRB No. 190). Section 10(d) of the National Labor Relations Act ("the Act") provides that "the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." 29 U.S.C. § 160(d). However, Section 10(e) of the Act makes clear that such power terminates "[u]pon the filing of the record with [the court]." 29 U.S.C. § 160(e); accord Ford Motor Co. v. NLRB, 305 U.S. 364, 368 (1939) ("The authority conferred upon the Board by Section 10(d) . . . end[s] with the filing in court of the transcript of record."). From that point forward, "the jurisdiction of the court [is] exclusive." 29 U.S.C. § 160(e); see also Kronenberger v. NLRB, 496 F.2d 18, 19 (7th Cir. 1974) (the court's "jurisdiction . . . [is] concurrent with that of the Board until the transcript of record [is] filed").

Here, the administrative record in the above-referenced case was filed with the Ninth Circuit on June 20, 2017. Under the clear terms of Section 10(e) of the Act, the Board ceased to have

jurisdiction over the case at that point. The Board accordingly has no jurisdiction to entertain your motion, and therefore it will not be forwarded to the Board for consideration.

Very truly yours,

/s/ Farah Z. Qureshi Associate Executive Secretary

cc: Parties Region DAVID A. ROSENFELD, Bar No. 058163 WEINBERG, ROGER & ROSENFELD A Professional Corporation 1001 Marina Village Parkway, Suite 200 Alameda, California 94501 Telephone (510) 337-1001 Fax (510) 337-1023

E-Mail: drosenfeld@unioncounsel.net

Attorneys for Proposed Intervenor, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

THE BOEING COMPANY

and

SOCIETY OF PROFESSIONAL ENGINEERING EMPLOYEES IN AEROSPACE, affiliated with INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS, LOCAL 2001, No. 19-CA-090932; 19-CA-090948; 19-CA-095926

MOTION TO INTERVENE OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO/MOTION FOR RECONSIDERATION

International Union of Painters and Allied Trades, District Council 15, Local 159, AFL-CIO, the Proposed Intervenor in this matter, hereby moves for an order permitting it to intervene in this proceeding, for the purpose of seeking Reconsideration of the Board's Decision, which affects the Proposed Intervenor.

1. The Proposed Intervenor is the Charging Party in Case No. 28-CA-060841, *Caesars Entertainment Corp.*, 362 N.L.R.B. No. 190 (2015). That case is currently pending based upon a Petition for Enforcement filed by the General Counsel in the Ninth Circuit. It is Case No. 17-71353. The Proposed Intervenor is an Intervenor in that case. The employer is resisting enforcement of the Board's Order.

- 2. The Charging Party is also Petitioner in a Petition for Review filed in that Court. That case is Case No. 17-73379. Those cases have been consolidated by the Court, and the employer's opening brief has been filed in the consolidated cases.
- 3. The Board's Decision in this case, *Boeing Co.*, 365 N.L.R.B. No. 154 (2017), potentially affects the outcome of those Petitions for Review and the Board's Order in *Caesars Entertainment Corp*. In particular, in this case, the majority, consisting of Chairman Miscimarra (now departed) and Members Kaplan and Emanuel, specifically overruled the Board's Decision in *Caesars Entertainment Corp*. The Board also incorrectly adopted a finding that was not a finding of the Board but was a statement of then Board Member Johnson. *See Boeing Co..*, 365 N.L.R.B. No. 154 at p. 19 n.89.
- 4. This Decision and this footnote may have a material impact upon the outcome of a prior decision of the Board in *Caesars Entertainment Corp.*, which is now final. Caesar's Entertainment has already sought Reconsideration before the Board in *Caesars Entertainment Corp.* Indeed, the Board doesn't have the power to even rule on that case since it is pending in the Ninth Circuit and the Certificate of Record has been filed. *See* 29 U.S.C. § 160(e). The Board has rejected the Motion for Reconsideration filed by Caesar's Entertainment, relying on Section 10(e). A copy of the Board's Order rejecting the motion for reconsideration is attached as Exhibit A. This letter, with its citations, makes it clear that the Board recognized that it did not have jurisdiction under Section 10(d) to reconsider the *Caesars Entertainment Corp.* case and it certainly had no right to reconsider its *Caesars Entertainment Corp.* decision in this case pending before the Board. Presumably, Caesar's Entertainment will continue to rely on that footnote in resisting enforcement and the Charging Party's Petition for Review.
- 5. The Board's footnote and Decision were issued without due process or notice to the Charging Party. This violates the rights of the Charging Party.
- 6. This Decision, issued by now departed Chairman Miscimarra with Members
 Emanuel and Kaplan, has another infirmity. Member Emanuel was formerly a member of Littler
 Mendelson before he took his position on the Board. His firm, in multiple cases, represented the

Boeing Company. Attached as Exhibit B is a copy of a Lexis search showing numerous cases in which his firm was counsel to the Boeing Company. We do not know what other services Littler Mendelson and/or Mr. Emanuel rendered directly to the Boeing Company, but, given this record, we assume, as the Board must, that there are many other situations or cases where Littler Mendelson, throughout the country, rendered services to the Boeing Company. This renders Mr. Emanuel disqualified, and he should have recused himself from deciding the *Boeing Co.* case and certainly *Caesars Entertainment Corp*. We note that there is no reason to believe that Littler Mendelson has discontinued representation of the Boeing Company in these cases or in other matters. We also have no reason to doubt that Member Emanuel may have been consulted about the cases or issues in the cases.

- 7. Attached as Exhibit C is a copy of a list of cases in which Littler Mendelson represented Caesar's Entertainment. This further proves that Member Emanuel should have recused himself from either the Decision or any comment that may have effect on the *Caesars Entertainment Corp*. case because of his firm's past representation and/or potentially current representation of Caesar's Entertainment. We note that there is no reason to believe that Littler Mendelson has ceased its representation of Caesar's Entertainment in some of these cases or in other matters. We also have no reason to doubt that Member Emanuel may have been consulted about the cases or issues in the cases.
- 8. Attached as Exhibit D is a copy of the Motion that the Committee to Preserve the Religious Right to Organize has filed with the Board seeking the recusal of Member Emanuel in all cases. That Motion is incorporated by reference. The Board has not ruled on this Motion. We understand it is pending. The Motion explains why Member Emanuel should have recused himself from participating in this case. Now departed Chairman Miscimarra properly recused himself from cases where his firm had been involved, Member Emmanuel should have done the same. See, e.g., PCMC/Pac. Crane Maint. Co., 362 N.L.R.B. No. 120, p. 1 n.2 (2015) (Chairman Miscimarra's firm represented the Pacific Maritime Association, which was indirectly affected even though it was not a direct party.).

- 9. Member Emanuel has benefitted his firm's clients and himself by being involved in this case. This violates every applicable ethical standard. Moreover, the Decision was issued without notice and in violation of the due process rights of the Proposed Intervenor. Specifically, it violates the Administrative Procedure Act, 5 U.S.C. § 554. It violates the Board Rules of Procedure in all respects about giving notice to parties and opportunity to appear and present evidence. It violates the Due Process Clause of the U.S. Constitution, Amendment V.
- 10. The Decision furthermore violates Executive Order No. 13771, 82 Fed. Reg. 9339 (Jan. 30, 2017), which directs agencies, presumably including the NLRB, to eliminate two regulations before implementing any new regulation. The Board's Decision constitutes a new regulation issued by Decision-making and the Board has not eliminated any regulations.

In summary, the Board has issued a Decision in the *Boeing Co.* case that affects the rights of the Charging Party in the *Caesars Entertainment Corp.* case. Although we do not concede that the footnote effectively vacates the Board Decision, it will certainly be argued by Caesar's Entertainment and may have that impact. The Decision was issued without due process to the Charging Party. This Decision was furthermore issued by a majority consisting of Member Emanuel, who should have recused himself because of his firm's representation of the Boeing Company and because of his firm's representation of Caesar's Entertainment. Finally, the rule was issued without complying with Executive Order No. 13771.

The effort in *Boeing Co.* to reach out and overrule a pending case was a cynical and desperate effort to reverse a decision by the prior Board. For these reasons, the Motion to Intervene should be granted for the purposes of the Board vacating the entire decision in *Boeing Co.*. It must be decided by a panel consisting of members of the Board who may validly consider the issues and excluding members who should be recused. That panel may not include Member Emanuel. The Board may not violate the rights of the Charging Party. In the

alternative, the Board should reconsider and strike any references to *Caesars Entertainment Corp*.

Dated: January 10, 2018 WEINBERG, ROGER & ROSENFELD A Professional Corporation

Attorneys for Proposed Intervenor, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO

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Case: 17-71353, 02/14/2018, ID: 10764286, DktEntry: 41, Page 22 of 74

EXHIBIT A

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NATIONAL LABOR RELATIONS BOARD

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December 19, 2017

Lawrence D. Levien James C. Crowley Akin Gump Strauss Hauer & Feld, LLP 1333 New Hampshire Avenue, NW Washington, DC 20036

Re: Caesars Entertainment Corp. d/b/a RIO All-Suites Hotel and Casino Case 28-CA-060841

Dear Mr. Levien and Mr. Crowley:

This letter acknowledges receipt of the Respondent's Motion for Reconsideration or Reopening the Record and Rehearing, filed with the Board on December 18, 2017 in the subject case.

Section 102.48(c)(2) of the Board's Rules and Regulations provides that any motion for reconsideration of a Board decision shall be filed within 28 days, or such further period as may be allowed, after service of the decision. Respondent's motion seeks reconsideration of the Board's Decision and Order which was issued on August 27, 2015. As stated above, the motion for reconsideration here was filed on December 18, 2017, more than two years after the issuance of the Board's decision in this matter. Accordingly, the motion for reconsideration is untimely.

Moreover, this case is currently pending in the United States Court of Appeals for the Ninth Circuit on the application of the National Labor Relations Board to enforce the Board's August 27, 2015 Decision and Order (362 NLRB No. 190). Section 10(d) of the National Labor Relations Act ("the Act") provides that "the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it." 29 U.S.C. § 160(d). However, Section 10(e) of the Act makes clear that such power terminates "[u]pon the filing of the record with [the court]." 29 U.S.C. § 160(e); accord Ford Motor Co. v. NLRB, 305 U.S. 364, 368 (1939) ("The authority conferred upon the Board by Section 10(d) . . . end[s] with the filing in court of the transcript of record."). From that point forward, "the jurisdiction of the court [is] exclusive." 29 U.S.C. § 160(e); see also Kronenberger v. NLRB, 496 F.2d 18, 19 (7th Cir. 1974) (the court's "jurisdiction . . . [is] concurrent with that of the Board until the transcript of record [is] filed").

Here, the administrative record in the above-referenced case was filed with the Ninth Circuit on June 20, 2017. Under the clear terms of Section 10(e) of the Act, the Board ceased to have

jurisdiction over the case at that point. The Board accordingly has no jurisdiction to entertain your motion, and therefore it will not be forwarded to the Board for consideration.

Very truly yours,

/s/ Farah Z. Qureshi Associate Executive Secretary

cc: Parties Region TO
REGION
DAVID ROSENFIELD
CAREN SENCER
MAR RICCIARDI
JOHN MCLACHLAN
LAWRENCE LEVIEN
JOHN KOERNER
ELIZABETH CYR

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EXHIBIT B



Results for: name(boeing) and counsel(littler) and >2012 and no...

Cases

United States District Court for the District of Colorado | Jul 09, 2014 | 2014 U.S. Dist. LEXIS 93150

- ... Alyson Alexis Smith, Erin Ashley Webber, Littler Mendelson, PC -Denver, Denver, CO. R. Brooke Jackson, ...
- ... ERNEST McDONALD, Plaintiff, v. THE **BOEING** COMPANY, Defendant. McDonald v. **Boeing** Co. Civil Action No 13-cv-01703-RBJ United States District Court for ...

2. Anderson v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania Aug 30, 2016 2016 U.S. Dist. LEXIS 191074

- ... The Boeing Company, Defendant: RACHEL FENDELL SATINSKY, LITTLER MENDELSON, P.C., Philadelphia, PA USA; RICHARD R. HARRIS, LITTLER MENDELSON, Philadelphia, ...
- ... MILKA A. ANDERSON v. THE **BOEING** COMPANY Anderson v. **Boeing** Co. CIVIL ACTION NO. 15-3073 United States District Court for ...

3. Toy v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | May 13, 2015 | 2015 U.S. Dist. LEXIS 62559

- ... RICHARD R. HARRIS, LEAD ATTORNEY, RACHEL FENDELL SATINSKY, LITTLER MENDELSON, PHILADELPHIA, PA. KEARNEY, J. KEARNEY...
- ... WILLIAM TOY v. THE **BOEING** COMPANY Toy v. **Boeing** Co. CIVIL ACTION NO. 14-3230 United States District Court for ...

4. Barker v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | May 13, 2014 | 21 F. Supp. 3d 417

- \dots COMPANY, Defendant: RICHARD R. HARRIS, SHELBY REASE SCHWARTZ , **LITTLER** MENDELSON, PHILADELPHIA , PA. L. FELIPE RESTREPO , \dots
- ... ZACHARY BARKER et al. v. THE **BOEING** COMPANY Barker v. **Boeing** Co. CIVIL ACTION No. 12-6684 United States District Court for ...

United States District Court for the Western District of Washington | Oct 29, 2013 | 2013 U.S. Dist. LEXIS 191301

... Rachelle L Wills, Ryan Paul Hammond, LITTLER MENDELSON (WA), SEATTLE, WA. For Aetna Insurance Company, Defendant: ...

Page 2 of 5

... PRENTISS B. DAVIS, Plaintiff, v. THE **BOEING** COMPANY, et al., Defendants. Davis v. **Boeing** Co. CASE NO. C11-1033-JCC United States District Court for the ...

6. Steenmeyer v. Boeing Co.

United States District Court for the Western District of Washington | Mar 12, 2015 | 92 F. Supp. 3d 1024

- ... A Nguyen, Ryan Paul Hammond, LEAD ATTORNEYS, LITTLER MENDELSON (WA), SEATTLE, WA. Marsha J. Pechman ...
- ... AMY STEENMEYER, Plaintiff, v. THE **BOEING** COMPANY, Defendant. Steenmeyer v. **Boeing** Co. CASE NO. C13-2184 MJP United States District Court for ...

7. A Davis v. United States

United States Court of Appeals for the Ninth Circuit | May 19, 2015 | 604 Fed. Appx. 565

- ... Appellant, v. UNITED STATES OF AMERICA, Defendant, and THE **BOEING** COMPANY; AETNA INSURANCE COMPANY, Defendants Appellees. Davis v. ...
- ... Hammond , Attorney, Rachelle Lee Wills , Attorney, Littler Mendelson, P.C. , Seattle, WA. For AETNA INSURANCE ...

8. Monper v. Boeing Co.

United States District Court for the Western District of Washington | May 13, 2015 | 104 F. Supp. 3d 1170

Overview: In action for fiduciary breach and failure to monitor under ERISA § 502(a)(3), 11 U.S.C.S. § 1132(a)(3), plaintiffs pled facts sufficient to show that members of Employee Benefits Plans Committee failed to take appropriate steps to ensure that ministerial employees provided them with complete and accurate information missing from plan documents.

- ... Deidra A Nguyen , Ryan Paul Hammond , LITTLER MENDELSON (WA), SEATTLE , WA. RICARDO S. MARTINEZ ...
- ... BRETT A. LYNCH, and MARK C. VETURIS, Plaintiffs, v. THE **BOEING** COMPANY, et al., Defendants. Monper v. **Boeing** Co. Case No. 2:13-cv-01569-RSM...

9. A.A. v. Blue Cross & Blue Shield

United States District Court for the Western District of Washington | Mar 07, 2014 | 2014 U.S. Dist. LEXIS 29986

- ... of HEALTH CARE SERVICE CORPORATION ILLINOIS STATE PAC, NFP; THE **BOEING** COMPANY MASTER WELFARE PLAN; THE **BOEING** SERVICE CENTER FOR HEALTH AND INSURANCE PLANS; and EMPLOYEE BENEFIT ...
- ... LEAD ATTORNEY, PRO HAC VICE, LITTLER MENDELSON PC, DENVER, CO; Deidra A Nguyen, LITTLER MENDELSON (WA), SEATTLE, ...

United States Court of Appeals for the Tenth Circuit | Mar 03, 2015 | 602 Fed. Appx. 452

Overview: In this Title VII action, the grant of summary judgment to the employer was affirmed because the employee put forth no evidence that any person with influence over the decision to terminate him made offensive racial comments, approved of such comments, or terminated the employee because such comments were made by others.

- ... Appellee: Alyson Alexis Smith, Erin Ashley Webber , Littler Mendelson, Denver, CO. Before KELLY , BALDOCK , ...
- ... ERNEST MCDONALD, Plaintiff-Appellant, v. THE **BOEING** COMPANY, Defendant-Appellee. McDonald v. **Boeing** Co. No. 14-1288 United States Court of Appeals for the ...

11. A Monper v. Boeing Co.

United States District Court for the Western District of Washington | Apr 28, 2016 | 2016 U.S. Dist. LEXIS 56934

- ... Kellie Anne Tabor, Ryan Paul Hammond, LITTLER MENDELSON (WA), SEATTLE, WA. Does 1-20, as ...
- ... BRETT A. LYNCH, and MARK C. VETURIS, Plaintiffs, v. THE **BOEING** COMPANY et al., Defendants. Monper v. **Boeing** Co. Case No. C13-1569 RSM...

12. A Kelly v. Boeing, Inc.

United States Court of Appeals for the Third Circuit | Feb 04, 2013 | 513 Fed. Appx. 131

Overview: In discrimination suit, where employee refused to sign written settlement agreement, employer's motion to enforce the agreement was properly granted because, inter alia, testimony at the evidentiary hearing clearly showed that he expressly authorized counsel to convey a settlement offer of \$225,000 to the employer and that the employer accepted.

- ... S. CHARLES KELLY, Appellant. v. **BOEING**, INC., also known as **BOEING** HELICOPTER Kelly v. **Boeing**, Inc. No. 11-3475...
- ... Defendant Appellee: Nina K. Markey , Esq. , Littler Mendelson, Philadelphia , PA. Before: FUENTES , ...

13. 🔼 Wortman v. Boeing Co.

United States District Court for the District of Oregon, Portland Division | Sep 06, 2016 | 2016 U.S. Dist. LEXIS 119909

- ... CA; David P. R. Symes, Littler Mendelson, P.C., Portland, OR. JOHN V. ACOSTA ...
- ... SIDNEY WORTMAN, Plaintiff, v. THE **BOEING** COMPANY, Defendant. Wortman v. **Boeing** Co. 3:15-cv-01735-AC United States District Court for the District of ...

14. A Gulec v. Boeing Co.

United States Court of Appeals for the Ninth Circuit | Oct 03, 2017 | 698 Fed. Appx. 372

... Defendant - Appellee: Steven A. Groode , Attorney, Littler Mendelson, P.C. , Los Angeles, CA. For Agusta Westland North ...

... TUGRUL GULEC, Plaintiff-Appellant, v. THE **BOEING** COMPANY; et al., Defendants-Appellees. Gulec v. **Boeing** Co. No. 15-56700 United States Court of Appeals for the ...

15. Vaughan v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | Jan 19, 2017 | 229 F. Supp. 3d 339

... RACHEL FENDELL SATINSKY, RYAN D. FREEMAN, **LITTLER** MENDELSON, P.C., PHILADELPHIA, PA; RICHARD R. HARRIS, **LITTLER** MENDELSON, PHILADELPHIA, ...

... THOMAS K. VAUGHAN, JR., Plaintiff, v. THE **BOEING** COMPANY, Defendant. Vaughan v. **Boeing** Co. CIVIL ACTION No. 15-4845 United States District Court for ...

16. A Hirsh v. Boeing Health & Welfare Benefit Plan

United States District Court for the Eastern District of Pennsylvania | May 01, 2013 | 2013 U.S. Dist. LEXIS 66390

... JOEL E. HIRSH vs. **BOEING** HEALTH AND WELFARE BENEFIT PLAN, a/k/a THE **BOEING** TRADITIONAL MEDICAL PLAN and **BOEING** EMPLOYEE BENEFITS PLAN COMMITTEE Hirsh v. **Boeing** Health & Welfare Benefit Plan...

... COMMITTEE, Defendants: KIMBERLY J. GOST, LEAD ATTORNEY, LITTLER MENDELSON, PHILADELPHIA, PA; NINA MARKEY, LITTLER MENDELSON, PC, ...

17. A.A. v. Blue Cross & Blue Shield of III.

United States District Court for the Western District of Washington | May 24, 2013 | 2013 U.S. Dist. LEXIS 74045

... of HEALTH CARE SERVICE CORPORATION ILLINOIS STATE PAC, NFP; THE **BOEING** COMPANY MASTER WELFARE PLAN; THE **BOEING** SERVICE CENTER FOR HEALTH AND INSURANCE PLANS; and EMPLOYEE BENEFIT ...

... LEAD ATTORNEY, PRO HAC VICE, LITTLER MENDELSON PC, DENVER, CO; Deidra A Nguyen, LITTLER MENDELSON (WA), SEATTLE, ...

18. • Anderson v. Boeing Co.

United States Court of Appeals for the Third Circuit | Jun 19, 2017 | 694 Fed. Appx. 84

Overview: A district court's entry of summary judgment in favor of an employer in a discrimination and retaliation case was affirmed since she had not shown that she was either pregnant at or near the time of her termination, and there was no evidence that could give rise to a finding of race or national origin discrimination in the RIF process.

... Philadelphia, PA; Richard R. Harris, Esq., Rachel F. Satinsky, Esq., Littler Mendelson, Philadelphia, PA. Before: McKEE, ...

... MILKA A. ANDERSON, Appellant v. THE **BOEING** COMPANY Anderson v. **Boeing** Co. No. 16-3574 United States Court of Appeals for the ...

19. A Bennick v. Boeing Co.

Case: 17-71353, 02/14/2018, ID: 10764286, DktEntry: 41, Page 31 of 74page 5 of 5

United States District Court for the Northern District of Alabama, Northeastern Division | Jul 08, 2013 | 2013 U.S. Dist. LEXIS 94407

- ... Jay D St Clair , LEAD ATTORNEYS, LITTLER MENDELSON PC , Birmingham, AL . C. LYNNWOOD SMITH ...
- ... MARK E. BENNICK, Plaintiff, vs. THE **BOEING** COMPANY, Defendant. Bennick v. **Boeing** Co. Civil **Action No. CV-13-S-1154-NE** United States District Court for ...

20. Overby v. Boeing Global Staffing

United States Court of Appeals for the Third Circuit | Jul 08, 2014 | 571 Fed. Appx. 118

- ... Theodore A. Schroeder , Esq., Zoe B. Tsien, Esq., Littler Mendelson, Pittsburgh, PA. For Verifications Inc , Defendant ...
- ... ARTHUR R. OVERBY, Appellant v. **BOEING** GLOBAL STAFFING; VERIFICATIONS INC Overby v. **Boeing** Global Staffing No. 14-1683 United States Court of Appeals for ...

21. Anderson v. Boeing Co.

United States District Court for the Eastern District of Pennsylvania | Aug 30, 2016 | 2016 U.S. Dist. LEXIS 191073

- ... The Boeing Company, Defendant: RACHEL FENDELL SATINSKY, **LITTLER** MENDELSON, P.C., Philadelphia, PA USA; RICHARD R. HARRIS, **LITTLER** MENDELSON, Philadelphia, ...
- ... MILKA A. ANDERSON v. THE **BOEING** COMPANY Anderson v. **Boeing** Co. CIVIL ACTION NO. 15-3073 United States District Court for ...

22. Barker v. Boeing Co.

United States Court of Appeals for the Third Circuit | Jul 14, 2015 | 609 Fed. Appx. 120

- ... Richard R. Harris, Esq., Rachel F. Satinsky, Esq., Littler Mendelson, Philadelphia, PA. Before: SMITH, GREENAWAY, ...
- ... BARKER; FRANCIS X. BOYD, JR.; DAVID W. SMITH v. THE **BOEING** COMPANY, Francis X. Boyd, Jr. and David W. Smith, Appellants Barker v. **Boeing** Co. No. 14-3009...

23. A Wortman v. Boeing Co.

United States District Court for the District of Oregon, Portland Division | May 16, 2016 | 2016 U.S. Dist. LEXIS 65335

- ... CA; David P. R. Symes, Littler Mendelson, P.C., Portland, OR. JOHN V. ACOSTA ...
- ... SIDNEY WORTMAN, Plaintiff, v. THE **BOEING** COMPANY, Defendant. Wortman v. **Boeing** Co. 3:15-cv-1735-AC United States District Court for the District of ...

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EXHIBIT C



Results for: name(Caesars Entertainment or Rio All-Suites Hotel...

Cases

1. United States EEOC v. Caesars Entm't

United States District Court for the District of Nevada | Apr 23, 2006 | 2006 U.S. Dist. LEXIS 26897

- ... U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff v. CAESARS ENTERTAINMENT, INCORPORATED, a Delaware Corporation, PARK PLACE ENTERTAINMENT CORPORATION, a Delaware Corporation and DOES 1-10, inclusive, Defendants; ELINA ...
- ... JESSICA ALVARADO PANAMENO, TANGE JOHNSON and CANDELARIA TURCIOS, Plaintiffs/Intervenors v. CAESARS ENTERTAINMENT, INCORPORATED, a Delaware Corporation, PARK PLACE ENTERTAINMENT CORPORATION, a Delaware Corporation; DESERT PALACE INC., a Nevada Corporation, dba CAESARS PALACE; JUAN GONZALEZ; DANIEL PINELO; RICARDO HERNANDEZ; and DOES 1-10 inclusive, Defendants United States EEOC v. Caesars Entm't...
- ... Entertainment Corporation , Defendant: Patrick H. Hicks , Littler Mendelson, PC , Las Vegas, NV; Veronica A. Arechederra-Hall, Littler Mendelson, PC , Las Vegas, NV...
- ... Caesars Entertainment, Inc., Defendant: Patrick H. Hicks, Littler Mendelson, PC, Las Vegas, NV; Veronica A. Arechederra-Hall, Littler Mendelson, PC, Las Vegas, NV...

2. Mares v. Caesars Entm't, Inc.

United States District Court for the Southern District of Indiana, New Albany Division | Jan 10, 2007 | 2007 U.S. Dist. LEXIS 2539

- ... GUADALUPE (ROBERT) MARES, Plaintiff, vs. CAESARS ENTERTAINMENT, INC., HARRAH'S ENTERTAINMENT, INC., HARRAH'S OPERATING COMPANY, INC., CAESARS WORLD INC., ROMAN ENTERTAINMENT CORPORATION OF FLORIDA, CAESARS RIVERBOAT CASINO, LLC, f/k/a RDI/CAESARS RIVERBOAT CASINO, LLC f/k/a HARCO ENTERTAINMENT COMPANY, LLC, Defendants. Mares v. Caesars Entm't, Inc. 4:06-cv-0060-JDT-WGH ...
- \dots Rick D. Roskelley , $\,$ LITTLER MENDELSON , Las Vegas , NV ; Todd M. Nierman , $\,$ LITTLER MENDELSON PC , Indianapolis, IN. $\,$...
- ... COMPANY, LLC , Defendants: Dustin D. Stohler , LITTLER MENDELSON PC , Indianapolis, IN; Rick D. Roskelley , LITTLER MENDELSON , ...

3. United States EEOC v. Caesars Entm't, Inc.

United States District Court for the District of Nevada Aug 16, 2006 237 F.R.D. 428

Overview: When information regarding a corporate employer's factual bases for its position statements in a sex discrimination action was discoverable by written interrogatories and not protected by the attorney-client privilege or the work product doctrine, then the same information was discoverable by an oral deposition under Fed. R. Civ. P. 30(b)(6).

... U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, vs. CAESARS ENTERTAINMENT, INC, et al., Defendants, and ELINA MASID, et al., Plaintiff-Intervenors. United States EEOC v. Caesars Entm't, Inc...

... Veronica A. Arechederra-Hall , Littler Mendelson, PC , Las Vegas, NV. For Desert Palace, Inc, Defendant: Deborah L. Westbrook , Littler Mendelson, Las Vegas, NV. For Juan Gonzalez, Defendant: Place Entertainment Corporation , Defendants: Deborah L. Westbrook , Littler Mendelson, Las Vegas, NV.; Patrick H. Hicks , Veronica A. Arechederra-Hall , Littler Mendelson, PC...

4. U.S. EEOC v. Caesars Entm't, Inc.

United States District Court for the District of Nevada | Apr 25, 2007 | 2007 U.S. Dist. LEXIS 30365

... U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. CAESARS ENTERTAINMENT, INCORPORATED, a Delaware Corporation, PARK PLACE ENTERTAINMENT CORPORATION, a Delaware Corporation and DOES 1-10, inclusive, Defendants. ELINA JESSICA ALVARADO PANAMENO, TANGE JOHNSON and CANDELARIA TURCIOS, Plaintiffs/Intervenors, v. CAESARS ENTERTAINMENT, INCORPORATED, a Delaware Corporation, PARK PLACE ENTERTAINMENT CORPORATION, a Delaware Corporation; DESERT PALACE INC., a Nevada Corporation, dba CAESARS PALACE; JUAN GONZALEZ; DANIEL PINELO; RICARDO HERNANDEZ; and DOES 1-10 inclusive, Defendants. U.S. EEOC v. Caesars Entm't, Inc.... ... Inc. , Defendants: Deborah L. Westbrook , LEAD ATTORNEY, Littler Mendelson, Las Vegas, NV; Veronica A. Arechederra-Hall , Littler Mendelson, PC , Las Vegas, NV. For Juan Gonzalez, Defendant: Entertainment Corporation, Defendants: Deborah L. Westbrook , LEAD ATTORNEY, Littler Mendelson, Las Vegas, NV; Patrick H. Hicks , LEAD ...

5. Bravo v. Caesars Entm't Corp.

United States District Court for the District of Nevada Dec 17, 2014 2014 U.S. Dist. LEXIS 174763

- ... GREGORIO BRAVO, Plaintiff(s), v. CAESARS ENTERTAINMENT CORPORATION dba CAESARS PALACE, Defendant(s). Bravo v. Caesars Entm't Corp. Case No. 2:14-CV-1616 JCM (CWH) United States District Court ...
- ... Defendant: Patrick H. Hicks , LEAD ATTORNEY, Littler Mendelson, PC , Las Vegas, NV; Rachel Silverstein, LEAD ATTORNEY, Littler Mendelson , ...

6. Wurtz v. Caesars Entm't, Inc.

United States Court of Appeals for the Ninth Circuit Feb 14, 2008 266 Fed. Appx. 676

Overview: Where there was no indication that a former employee's supervisor or anyone else in the company had ever sexually harassed the former employee, and she never expressed any concern about unwanted sexual advances, there was no factual basis on which her supervisor could have perceived that the employee was engaged in protected activity.

... MARGARET KURTZ, Plaintiff - Appellant, v. CAESARS ENTERTAINMENT, INC.; PARK PLACE ENTERTAINMENT CORP., Defendants - Appellees. Kurtz v. Caesars Entm't, Inc. No. 06-15844... ... II , Esq. , Wendy Krincek , Esq. , LITTLER MENDELSON, PC, Las Vegas , NV . PARK ...

7. State ex rel. Tivol Plaza, Inc. v. Mo. Comm'n on Human Rights

Supreme Court of Missouri Aug 22, 2017 527 S.W.3d 837

Page 3 of 3

Overview: Mo. Rev. Stat. § 213.111.1 required Missouri Commission on Human Rights (MCHR) to issue right-to-sue letter and terminate proceedings related to complaint if 180 days had elapsed and employee had made written request for right-to-sue letter, which happened. MCHR lost authority to continue processing charges and was required to issue letters.

- ... RIGHTS, ET AL., Respondents. and STATE OF MISSOURI EX REL. **CAESARS ENTERTAINMENT** OPERATING CO., INC., ET AL., Appellants, v. MISSOURI COMMISSION ON ...
- ... SC95759, Caesars was represented by Sarah J. Preuss of **Littler** Mendelson PC in Kansas City. In SC95759, the commission ...

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EXHIBIT D

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Attorneys for THE COMMITTEE TO PRESERVE THE RELIGIOUS RIGHT TO ORGANIZE

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

In Re Recusal of William Emanuel

IN RE RECUSAL OF WILLIAM EMANUEL

The Committee to Preserve the Religious Right to Organize

The Committee to Preserve the Religious Right to Organize, a person, requests that the Board issue an Order that William J. Emanuel be recused from considering any Board matters until the Littler Mendelson law firm and the Jones Day law firm submit complete lists of their clients so that the Board, Member Emanuel, and the public can determine whether it is necessary that Member Emanuel recuse himself from considering certain cases before the Board.

This request requires urgent consideration. Otherwise, there is a serious risk that Member Emanuel will consider cases in violation of ethics rules.

- 1. The Committee to Preserve the Religious Right to Organize is a person. *See Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010). It is also a Charging Party before the Board. The Committee consists of various individuals and organizations including employees or former employees within the meaning of the Act.
- 2. The Committee has participated in National Labor Relations Board proceedings. See, e.g., The Committee to Preserve the Religious Right to Organize v. National Labor Relations Board, Case No. 16-2297 (Seventh Cir.) on Petition for Review and Cross-Petition for Enforcement from Hobby Lobby Stores, Inc., 363 NLRB No. 195 (2016) (the Committee as Charging Party); Hobby Lobby Stores, Inc., Case 20-CA-162492 (Committee was the Charging Party), and currently The Trump Corporation, Case 02-CA-183801 and Trump Vineyard Estates, Case 05-CA-190783 (case closed in 2017). There is no doubt that the Committee is not only a person but is a proper Charging Party before the Board.
- 3. It is undisputed that Member Emanuel was a shareholder at Littler Mendelson for many years before he took his seat on the Board. He was also previously a shareholder at the Jones Day law firm.
- 4. According to the submissions that Member Emanuel made on OGE Form 278e, he received substantial income from named clients of Littler Mendelson. Although he has not received any income recently from representation of clients while working for the Jones Day law firm, at least as disclosed on the form, he remains a participant in the Jones Day Qualified Defined Benefit Plan. *See* Exhibit A.

5. Recently, 12 Senators signed a letter, which was forwarded to Member Emanuel, asking that he take appropriate action to recuse himself from cases regarding any former clients. See Exhibit B. That letter specifically requests as follows:

Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.

The Senators properly requested Member Emanuel to recuse himself from all cases pending before the Board involving clients that he claims to have directly represented. *See* Executive Order 13770(1)(6); 5 Code of Federal Regulations §§ 2635.101 and 2635.502; 18 U.S.C. § 208.

- 6. However, Member Emanuel has failed to comply with the Senators' request. The list attached to Member Emanuel's OGE Form 278e only contains clients that he claims to have generated a substantial income. Member Emanuel is unclear as to whether he personally earned the income or his law firm earned the income while representing these clients. The Littler Mendelson firm is the nation's largest employment firm. It has offices in 75 locations in the United States and abroad and advertises on its website that it has 1,300 attorneys. *See* https://www.littler.com/about-littler. Consequently, Littler Mendelson must have thousands of paying clients (and perhaps even a very few non-paying clients). Many of these clients cannot be found by searching the NLRB's website or any public records. As a shareholder of Littler Mendelson, Member Emanuel would have had a financial interest related to any client represented by the firm, save the unlikely case where the client paid no legal fees.
- 7. The list attached to Member Emanuel's OGE Form 278e omits most clients of his law firm. Most likely, Member Emanuel has failed to disclose thousands of clients that generated income for Littler Mendelson and, by extrapolation, for shareholder Member Emanuel himself. Thus, under the ethics rules, he must recuse himself from any case before the Board involving a party that Littler Mendelson represented at any point during the last three years. *See*

Executive Order 13770(1)(6); 5 Code of Federal Regulations §§ 2635.101 and 2635.502; 18 U.S.C. § 208.

- 8. Given the vast size of Littler Mendelson, Member Emanuel likely does not know or remember all the clients represented by the firm. The Members of the Board do not know those clients and consequently cannot ensure Member Emanuel's recusal in all appropriate cases. The parties also do not know those clients and cannot request recusal based on conflict of interest. The public also does not know those clients. Thus, the integrity of the Board is compromised by a potential conflict of interest if Member Emanuel decides any cases without the disclosure of all clients represented by Littler Mendelson in the last two years.
- 9. To ensure transparency and complete compliance with the ethics rules, Member Emanuel must recuse himself from all cases until Littler Mendelson provides a public document listing all of its clients. Only then can the public, Member Emanuel, other Members of the Board, General Counsel and the parties make informed requests for recusal in appropriate cases.
- 10. It would not be sufficient for Littler Mendelson to provide a list of clients that it believes are before the Board. There are cases in many stages of litigation, including before Administrative Law Judges, where interim motions, special appeals or other proceedings come before the Board. The same is true of representation cases. Littler Mendelson may not know that a representation case is on-going with a client if that client or former client is using another lawyer or no lawyer. Such cases may come before the Board without any notice. Thus, to ensure complete transparency, Littler Mendelson should provide a complete public list of all clients that it represented in the last two years dated from when Member Emanuel was sworn in.
- 11. Similarly, the Jones Day firm must produce a public list of its clients during the last two years. That list can assure the public, as well as other Members of the Board and the

parties to litigation, that Member Emanuel will recuse himself from any case that involves a client of Jones Day. That list must also include all clients which it may have represented at any time during Member Emanuel's association with the firm which have cases pending before the Board.

- 12. Members of the National Labor Relations Board are executive branch employees bound by two sets of ethical standards: the Standards of Ethical Conduct for Employees of the Executive Branch established in Title 5 of the Code of Federal Regulations, and the Ethics Commitments by Executive Branch Appointees set forth by Executive Order 13770. Executive branch employees are also regulated by certain restrictions found in 18 U.S.C. § 208.
- 13. The Code of Federal Regulations ("Code") prohibits government employees from acting partially towards a private organization or individual, 5 C.F.R. § 2635.101(b)(8), and requires government employees to "endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part." *Id.* § 2635.101(b)(14). An employee "should not participate" in any matter where the employee was employed by one of the parties within the last year, or where "the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter," unless a designated agency official is informed of the appearance problem and gives his or her authorization. *Id.* § 2645.502.
- 14. Here, Member Emanuel is likely to act partially toward a party before the Board that was represented by his former law firms. Member Emanuel worked for many years in the law firms. He is likely to have a bias, perhaps a subconscious one, toward any client of the firms. Any ruling favoring a former client of either law firm "creat[es] the appearance that [Member Emanuel is] violating the law or . . . ethical standards." Consequently, "a reasonable

person with knowledge of the relevant facts" would question Member Emanuel's impartiality in deciding cases where a party has generated substantial income for Member Emanuel when he was a shareholder of Littler Mendelson or Jones Day.

- employees, for a period of two years from the date of appointment, from "participat[ing] in any particular matter involving specific parties that is directly and substantially related to [her or his] former employer or former clients. . . . " Ex. Order 13770, 82 Fed. Reg. 9333 (Jan. 28, 2017). A matter is "[d]irectly and substantially related" if "the appointee's former employer or a former client is a party or represents a party." *Id.* "Former client" includes persons whom the "appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment," and "former employer" is any person "for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner." *Id.* The Code imposes the same restriction for a one-year period.
- 16. Here, Member Emanuel was a shareholder and employee of Littler Mendelson prior to his appointment to the Board. Any client that has been represented by Littler Mendelson in the last two years is "directly and substantially related" to Member Emanuel's former employer. Thus, Member Emanuel should not participate in any case involving a current or former Littler Mendelson client.
 - 17. Under 18 U.S.C. § 208, every officer and employee of the executive branch and

¹ "Former client'... does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Ex. Order 13770, 82 Fed. Reg. 9333 (Jan. 28, 2017). This provision must be read to apply only to associates of law firms. Shareholders pool their resources and profits. Thus, each shareholder, regardless of her function at the firm, is personally responsible for providing services to the client and personally benefits financially from the client's legal fees.

any independent agency of the United States is forbidden from participating "in a judicial or other proceeding, application, request for a ruling or other determination, [when] ... to his knowledge, he ... has a financial interest" in the matter, unless the officer or employee has advised the government official responsible for his or her appointment of "the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination[,] ... makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee." 18 U.S.C. § 208. To constitute a violation, the matter must have a "direct and predictable effect" on the financial interest at issue, meaning there must be a "close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest." 5 C.F.R. § 2635.402.

- 18. Here, Member Emanuel has a "close causal link between any decision" involving a current or former Jones Day employee and the "expected effect of the matter on [Member Emanuel's] financial interest." As noted, Member Emanuel participates in Jones Day's Qualified Defined Benefit Plan. He has a financial interest in the solvency of the Jones Day law firm. Thus, Member Emanuel cannot hear any matter where the client is represented by Jones Day.
- 19. The 12 Senators are correct that Member Emanuel must recuse himself as required by his ethical obligations. It is also clear that he must recuse himself from any case in which his former firms, Littler Mendelson and Jones Day, represented a client in any case or matter or performed any services.

- 20. Littler Mendelson and Jones Day represented many clients in matters which are not made public through court or other filings. They have presumably thousands of clients with whom they have established attorney client relationships. They must be disclosed because the public, the parties, other Board members and Member Emanuel himself do not know the identity of these clients.
- 21. For example, this is reflected in Verizon Wireless and Communication Workers of America, AFL-CIO, et al., Cases 02-CA-157403, 02-CA-156761, 04-CA-156043, 05-CA-156053, 31-CA-161472. In that case, the Jones Day law firm represents Verizon. Member Emanuel must recuse himself from that case. Additionally, Verizon has used Littler Mendelson during the last three years to represent it in other cases. This is an alternative ground for Member Emanuel to recuse himself. See Exhibit C (listing known Verizon cases where the Littler Mendelson firm was retained). It is likely that there are many similar instances that are unknown because there are no public lists of Littler Mendelson' or Jones Days' clients.
- 22. This motion is urgent. The Board reviews and decides cases on a daily basis, including representation matters requiring quick decisions by the Board. There are numerous Board cases that are pending. Motions and Interim Appeals are filed daily. Only if Member Emanuel immediately recuses himself from all cases can the ethics requirements be fully satisfied. Member Emanuel should voluntarily recuse himself until these matters are resolved. Alternatively, the Board should order that Member Emanuel be recused from all cases until these matters are resolved. Any failure of Member Emanuel to recuse himself should be referred to the Ethics Officer and the Inspector General.

Dated: November 20, 2017 WEINBERG, ROGER & ROSENFELD A Professional Corporation

> /s/ David A. Rosenfeld By:

David A. Rosenfeld

Attorneys for THE COMMITTEE TO PRESERVE THE RĚLIGIOUS RIGHT TO ORGANIZE

144310\943274

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On November 20, 2017, I served the following documents in the manner described

below:

IN RE RECUSAL OF WILLIAM EMANUEL

☐ (BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Gary Shinners
Executive Secretary
National Labor Relations Board
1015 Half Street SE
Washington, D.C. 20570-0001
gary.shinners@nlrb.gov

Jennifer Abruzzo Deputy General Counsel National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 jennifer.abruzzo@nlrb.gov

Lauren McFerran Member National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 lauren.mcferran@nlrb.gov

Marvin E. Kaplan National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 marvin.kaplan@nlrb.gov William J. Emanuel Board Member National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 william.emanuel@nlrb.gov

Philip A. Miscimarra Chairman National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 philip.miscimarra@nlrb.gov

Mark G. Pearce Member National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 mark.pearce@nlrb.gov

Lori W. Ketcham Associate General Counsel, Ethics Designated Agency Ethics Official National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 lori.ketcham@nlrb.gov David P. Berry Inspector General Office of the Inspector General National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001 david.berry@nlrb.gov

☑ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.

Gary Shinners Executive Secretary National Labor Relations Board 1015 Half Street SE Washington, D.C. 20570-0001

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 20, 2017, at Alameda, California.

/s/ Karen Kempler
Karen Kempler

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EXHIBIT A

June 30, 2017

Lori W. Ketcham Associate General Counsel, Ethics Designated Agency Ethics Official National Labor Relations Board 1015 Half Street S.E. Washington, D.C. 20570

Dear Ms. Ketcham:

The purpose of this letter is to describe the steps I will take to avoid any actual or apparent conflict of interest if I am confirmed as a Board Member of the National Labor Relations Board.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with the law firm of Little Mendelson PC. I currently have a capital account with the firm, and I will receive a refund of that account within 3 years of my resignation. Additionally, when I resign from the firm, a fixed amount will be established to cover any funds owed to me under the firm's salary hold back policy. This fixed payment will cover compensation earned, but withheld, prior to my confirmation. I will receive that fixed amount in early 2018. Until I receive the refund of my capital account and the fixed hold back payment, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the firm to pay these obligations, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). For a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party, for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I was previously employed by the Jones Day law firm. I am a participant in Jones Day's Qualified Defined Benefit Plan. Because I will continue to participate in this plan, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of Jones Day to provide

this contractual benefit to me, unless I first obtain a written waiver under 18 USC 208(b)(1), or qualify for a regulatory exemption under 18 USC 208(b)(2).

Upon confirmation, I will resign from my position with the Wine and Food Society of Southern California, Inc. For a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know the Wine and Food Society of Southern California, Inc. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

I will retain my position as a trustee of the Emanuel Family Trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Board Member. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the Emanuel Family Trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I am required to sign the Ethics Pledge (Executive Order No. 13770) and that I will be bound by the requirements and restrictions therein, in addition to the commitments I have made in this and any other ethics agreement.

I will meet in person with you during the first week of my service in the position of Board Member in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

Finally, I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely.

William Francel

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Nominee Report | U.S. Office of Government Ethics; 5 C.F.R. part 2634 | Form Approved: OMB No. (3209-0001) (March 2014)

Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e)

Filer's Information

Emanuel, William Joesph

Member, National Labor Relations Board

Other Federal Government Positions Held During the Preceding 12 Months: None

Names of Congressional Committees Considering Nomination:

Committee on Health, Education, Labor, and Pensions

Electronic Signature - I certify that the statements I have made in this form are true, complete and correct to the best of my knowledge.

/s/ Emanuel, William Joesph [electronically signed on 05/02/2017 by Emanuel, William Joesph in Integrity.gov]

Agency Ethics Official's Opinion - On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments below).

/s/ Ketcham, Lori W, Certifying Official [electronically signed on 07/03/2017 by Ketcham, Lori W in Integrity.gov]

Other review conducted by

/s/ Gilman, Joseph S, Ethics Official [electronically signed on 07/03/2017 by Gilman, Joseph S in Integrity.gov]

U.S. Office of Government Ethics Certification

/s/ Apol, David, Certifying Official [electronically signed on 07/05/2017 by Apol, David in Integrity.gov]

1. Filer's Positions Held Outside United States Government

#	ORGANIZATION NAME	CITY, STATE	ORGANIZATION TYPE	POSITION HELD	FROM	ТО
1	Littler Mendelson PC	Los Angeles, California	Law Firm	Shareholder	7/2004	Present
2	Wine and Food Society of Southern California, Inc.	Los Angeles, California	Non-Profit	Board of Directors	6/2011	Present
3	Emanuel Family Trust	Los Angeles, California	Trust	Trustee	9/2007	Present

2. Filer's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	Littler Mendelson PC (law firm)	N/A		Salary	\$417,770
2	Littler Mendelson PC capital account	N/A	\$50,001 - \$100,000		None (or less than \$201)
3	Littler Mendelson 401(k) Plan	No			
3.1	MFS Total Return R3 Fund	Yes	\$500,001 - \$1,000,000		\$15,001 - \$50,000
4	Wells Fargo IRA	No			
4.1	BlackRock Liquidity Funds T-Fund Institutional Shares Fund	Yes	\$15,001 - \$50,000		\$5,001 - \$15,000
4.2	Dodge and Cox Income Fund	Yes	\$250,001 - \$500,000		\$5,001 - \$15,000
4.3	T. Rowe Price Short-Term Bond Fund	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500
4.4	Metropolitan West Total Return Bond Fund Class l	Yes	\$250,001 - \$500,000		\$2,501 - \$5,000
4.5	Eaton Vance Floating Rate Fund	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500

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#	DESCRIPTION	EIF VALUE		INCOME TYPE	INCOME AMOUNT	
4.6	PIMCO High Yield Fund INST	Yes	\$50,001 - \$100,000		\$2,501 - \$5,000	
4.7	Harbor Capital Appreciation Instl Fund	Yes	\$100,001 - \$250,000		\$201 - \$1,000	
4.8	MFS Value Fund - Class I	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000	
4.9	Vanguard 500 Index Fund Admiral	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000	
4.10	Principal MidCap Institutional Fund	Yes	\$100,001 - \$250,000		\$201 - \$1,000	
4.11	Undiscovered Managers Behavioral Value Fund - L	Yes	\$50,001 - \$100,000		\$201 - \$1,000	
4.12	Dodge & Cox International Stock Fund	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000	
4.13	Harbor International Fund Institutional Shares	Yes	\$100,001 - \$250,000		\$1,001 - \$2,500	
4.14	T. Rowe Price Instl Emerging Mkts Eq	Yes	\$50,001 - \$100,000		\$201 - \$1,000	
4.15	Cohen & Steers Instl Realty Shares	Yes	\$100,001 - \$250,000		\$5,001 - \$15,000	
4.16	Fidelity Advisor International Real Estate Fund	Yes	\$15,001 - \$50,000		\$201 - \$1,000	
4.17	Driehaus Active Income Fund	Yes	\$100,001 - \$250,000		\$2,501 - \$5,000	
4.18	Eaton Vance Global Macro Absolute Return Advantage Fund	Yes	\$50,001 - \$100,000		\$1,001 - \$2,500	
4.19	ASG Global Alternatives Y	Yes	\$15,001 - \$50,000		None (or less than \$201)	
5	Jones Day Qualified Defined Benefit Plan (value not readily ascertainable)	N/A	Retirement Payments (Annual)		\$15,500	
6	Littler Mendelson PC Anticipated Hold Back Payment	N/A	\$15,001 - \$50,000		None (or less than \$201)	

3. Filer's Employment Agreements and Arrangements

#	EMPLOYER OR PARTY	CITY, STATE	STATUS AND TERMS	DATE	
1	Littler Mendelson PC - Capital Account	Los Angeles, California	Pursuant to the terms of the agreement with the firm, when filer leaves the firm, his capital account will be paid back over the course of 3 years (or possibly sooner). The balance of the capital account is already established.	7/2004	
2	Jones Day Qualified Defined Benefit Plan	Los Angeles, California	I will continue to participate in this defined benefit plan.	1/1998	
3	Littler Mendelson 401(k) Plan	Los Angeles, California	l will continue to participate in this defined contribution plan. The plan sponsor will not make further contributions after my separation.	7/2004	
4	Littler Mendelson PC	Los Angeles, California	When the filer leaves the firm a fixed amount will be established to cover any funds owed to him under the firm's salary hold back. That fixed amount will be paid to the filer shortly after the end of 2017.	5/2017	

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
1	Littler Mendelson PC	Los Angeles, California	Legal Services
2	Amtrust Financial Services, Inc.	New York, New York	Legal Services
3	Atlas Air, Inc.	Purchase, New York	Legal Services
4	Automatic Labs, Inc.	San Francisco, California	Legal Services
5	Banker's Toolbox	Austin, Texas	Legal Services
6	BDI Insulation	Bakersfield, California	Legal Services

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
7	Bio-Reference Laboratories Inc.	Elmwood Park, New Jersey	Legal Services
8	BMC Stock Holdings Inc.	Atlanta, Georgia	Legal Services
9	CBRE	Los Angeles, California	Legal Services
10	Cipriani USA Inc	New York, New York	Legal Services
11	Community Bank	Syracuse, New York	Legal Services
12	Consolidated Equipment Group, LLC	Alexandria, Minnesota	Legal Services
13	Emcor Group Inc	Norwalk, Connecticut	Legal Services
14	Encore Capital Group	San Diego, California	Legal Services
15	Enterprise Products Partners L.P.	Houston, Texas	Legal Services
16	FedEx Freight	Harrison, Arizona	Legal Services
17	Genesis HealthCare	Lake Forest, California	Legal Services
18	Haggen Inc	Bellingham, Washington	Legal Services
19	Handy	New York, New York	Legal Services
20	ICON Aircraft	Vacaville, California	Legal Services
21	Internet Brands, Inc.	El Segundo, California	Legal Services
22	Irell & Manella LLP	Los Angeles, California	Legal Services
23	JPMorgan Chase Bank, N.A.	New York, New York	Legal Services

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
24	KDN Management Inc	Los Angeles, California	Legal Services
25	L&R Group of Companies	Los Angeles, California	Legal Services
26	La Quinta Car Wash	La Quinta, California	Legal Services
27	Los Angeles Unified School District	Los Angeles, California	Legal Services
28	M&T Bank	Buffalo, New York	Legal Services
29	MasTec, Inc.	Coral Gables, Florida	Legal Services
30	MiaSolé Hi-Tech Corp.	Santa Clara, California	Legal Services
31	National Freight Inc	Cherry Hill, New Jersey	Legal Services
32	Nissan North America, Inc.	Canton, Mississippi	Legal Services
33	Pacific Steel Casting Company LLC	Berkeley, California	Legal Services
34	Panda Restaurant Group, Inc.	Rosemead, California	Legal Services
35	PPG Industries, Inc.	Pittsburgh, Pennsylvania	Legal Services
36	Red Lobster	Orlando, Florida	Legal Services
37	Rite Aid Corporation	Camp Hill, Pennsylvania	Legal Services
38	Rural/Metro Corporation	Scottsdale, Arizona	Legal Services
39	Safeway Inc.	Pleasanton, California	Legal Services
40	The Salvation Army	Los Angeles, California	Legal Services

#	SOURCE NAME	CITY, STATE	BRIEF DESCRIPTION OF DUTIES
41	Seacastle Inc.	Walnut Creek, California	Legal Services
42	Securitas Security Services USA, Inc	Los Angeles, California	Legal Services
43	Serta Simmons Bedding, LLC	Atlanta, Georgia	Legal Services
44	Staples, Inc.	Framingham, Massachusetts	Legal Services
45	Sugarfina	Los Angeles, California	Legal Services
46	Toshiba America Energy Systems Corp.	Charlotte, North Carolina	Legal Services
47	Uber Technologies, Inc.	San Francisco, California	Legal Services
48	Vision Express / Wrag-Time	Gardena, California	Legal Services
49	Wilshire West, LLC	Beverly Hills, California	Legal Services

5. Spouse's Employment Assets & Income and Retirement Accounts

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1	SEP IRA	N/A	\$50,001 - \$100,000	SEP IRA	\$2,790
1.1	iShares Russell 2000 ETF	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.2	iShares Russell 1000 ETF	Yes	\$15,001 - \$50,000		\$201 - \$1,000
1.3	iShares 7-10 Year Treasury Bond ETF	Yes	\$15,001 - \$50,000		\$201 - \$1,000
1.4	iShares 1-3 Year Treasury Bond ETF	Yes	\$1,001 - \$15,000		None (or less than \$201)

#	DESCRIPTION	EIF	VALUE	INCOME TYPE	INCOME AMOUNT
1.5	iShares 20+ Year Treasury Bond	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.6	iShares MSCI Emerging Markets	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.7	iShares MCSI EAFE Index	Yes	\$1,001 - \$15,000		None (or less than \$201)
1.8	iShares Russell Midcap	Yes	\$1,001 - \$15,000		None (or less than \$201)

6. Other Assets and Income

#	DESCRIPTION		EIF	VALUE	INCOME TYPE	INCOME AMOUNT	
1	602 Santa Monica Partners LP	See Endnote	No	\$1,001 - \$15,000	Limited partnership distribution	\$2,676	
2	U.S. Checking account (cash)		N/A	\$15,001 - \$50,000	Interest	None (or less than \$201)	

7. Transactions

(N/A) - Not required for this type of report

8. Liabilities

#	CREDITOR NAME	ТУРЕ	AMOUNT	YEAR INCURRED	RATE	TERM
1	Wells Fargo	Mortgage on Personal Residence	\$500,001 - \$1,000,000	2016	3.25	30 Year

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9. Gifts and Travel Reimbursements

(N/A) - Not required for this type of report

Endnotes

PART	#	ENDNOTE
6.	11	This represents the filer's ownership interest in a small restaurant.

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Summary of Contents

1. Filer's Positions Held Outside United States Government

Part 1 discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation.

This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

2. Filer's Employment Assets & Income and Retirement Accounts

Part 2 discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes)
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

3. Filer's Employment Agreements and Arrangements

Part 3 discloses agreements or arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment
- Leave of absence
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer)
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.)

4. Filer's Sources of Compensation Exceeding \$5,000 in a Year

Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a calendar year for the filer's services during any year of the reporting period.

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The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

5. Spouse's Employment Assets & Income and Retirement Accounts

Part 5 discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share)
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents)

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF). Amounts of income are not required for a spouse's earned income (excluding honoraria).

6. Other Assets and Income

Part 6 discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children.

This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, money market accounts) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note: The type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

7. Transactions

Part 7 discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during reporting period.

This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, CDs, money market accounts) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

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8. Liabilities

Part 8 discloses liabilities over \$10,000 that the filer, the filer's spouse or dependent child owed at any time during the reporting period.

This section does not include the following types of liabilities: (1) mortgages on a personal residence, unless rented out (limitations apply for PAS filers); (2) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (3) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

9. Gifts and Travel Reimbursements

This section discloses:

- Gifts totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.
- Travel reimbursements totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

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Privacy Act Statement

Title I of the Ethics in Government Act of 1978, as amended (the Act), 5 U.S.C. app. § 101 et seq., as amended by the Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act), and 5 C.F.R. Part 2634 of the U. S. Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this report is for review by Government officials to determine compliance with applicable Federal laws and regulations. This report may also be disclosed upon request to any requesting person in accordance with sections 105 and 402(b)(1) of the Act or as otherwise authorized by law. You may inspect applications for public access of your own form upon request. Additional disclosures of the information on this report may be made: (1) to any requesting person, subject to the limitation contained in section 208(d)(1) of title 18, any determination granting an exemption pursuant to sections 208(b)(1) and 208(b)(3) of title 18; (2) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of violations or potential violations of law or regulation; (3) to another Federal agency, court or party in a court or Federal administrative proceeding when the Government is a party or in order to comply with a judge-issued subpoena; (4) to a source when necessary to obtain information relevant to a conflict of interest investigation or determination; (5) to the National Archives and Records Administration or the General Services Administration in records management inspections; (6) to the Office of Management and Budget during legislative coordination on private relief legislation; (7) to the Department of Justice or in certain legal proceedings when the disclosing agency, an employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (8) to reviewing officials in a new office, department or agency when an employee transfers or is detailed from one covered position to another; (9) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record; (10) to contractors and other non-Government employees working on a contract, service or assignment for the Federal Government when necessary to accomplish a function related to an OGE Government-wide system of records; and (11) on the OGE Website and to any person, department or agency, any written ethics agreement filed with OGE by an individual nominated by the President to a position requiring Senate confirmation. See also the OGE/GOVT-1 executive branch-wide Privacy Act system of records.

Public Burden Information

This collection of information is estimated to take an average of three hours per response, including time for reviewing the instructions, gathering the data needed, and completing the form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Program Counsel, U.S. Office of Government Ethics (OGE), Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

Pursuant to the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and no person is required to respond to, a collection of information unless it displays a currently valid OMB control number (that number, 3209-0001, is displayed here and at the top of the first page of this OGE Form 278e).

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EXHIBIT B

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United States Senate

WASHINGTON, DC 20510

November 6, 2017

The Honorable William Emanuel Member National Labor Relations Board 1015 Half Street S.E. Washington, D.C. 20570-0001

Dear Member Emanuel:

We write today to clarify your ethics obligations as a newly confirmed member of the National Labor Relations Board (NLRB). As you know, this position carries enormous importance for workers and the strength of the American economy. Millions of working Americans, whether or not they belong to unions, are now looking to you and your fellow board members to aggressively protect their right to join together to seek higher pay, better working conditions, and a brighter future for themselves and their families.

One element of serving as an NLRB member in a manner that is faithful to the law and to the American public is ensuring that you are not faced with any conflicts of interest, such as conflicts with any parties that come before the Board with whom you previously had a relationship. We are concerned about your long history of representing employers wishing to make it harder for workers to bargain collectively. Your record presents a number of conflicts, particularly with regard to the many clients of your former law firm, Littler Mendelson.

The ethics pledge that you signed pursuant to Executive Order 13770 prohibits you from participating in "any particular matter involving specific parties that is directly and substantially related to [your] former employer or former clients, including regulations and contracts." That Order specifies that "former clients" include anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment. "Directly and substantially related to [your] former employer" is defined as "matters in which the appointee's former employer or a former client is a party or represents a party." Thus, in order to adhere to these commitments, you will need to recuse from any matter in which your former employer, Littler Mendelson, is representing a party. In addition, under federal regulations, you are required to "endeavor to avoid any actions creating that appearance that [you] are violating the law..." or

¹ Exec. Order No. 13770, 3 C.F.R. 9333 (2017). Online at: https://www.oge.gov/web/oge.nsf/aExecutive%20Orders/A43C4DBAB9EC4DC7852580BC006FBA83/\$FILE/Exe c%20Order%2013770.pdf.

² Id.

failing to "act impartially and not give preferential treatment to any private organization or individual." Your involvement in any form in a case involving a client of your former law firm would clearly create, at minimum, the appearance of the kind of conflict of interest that this regulation prohibits.

During your July 13, 2017 confirmation hearing, you said that if you were confirmed, you would be "an excellent board member and an honest Board member and an objective one," and said: "[A]s I understand the recusal rule, I have to recuse myself from all cases involving my law firm." But in questions for the record following your confirmation hearing asking you to specify which parties that might come before the board may require your recusal, you simply said, "I have provided the financial information required by law. Please see my 278 filing."

The financial information you've provided, however, does not give a full picture of your potential conflicts. Section 4 of the Office of Government Ethics Form 278e, or "Public Financial Disclosure Report," that you submitted during your confirmation process lists 49 companies as "Filer's Sources of Compensation Exceeding \$5,000 in a Year," including major employers like JPMorgan Chase Bank, Nissan North America, PPG Industries, Securitas Security Services USA, Rite Aid Corporation, and Uber Technologies. Staff have identified dozens of pending cases before the NLRB that each involve one of these 49 companies, listed in the attachment to this letter, and more will presumably arise during your tenure on the Board that will require your recusal. But when it comes to determining which parties would require your recusal based on ethics regulations and the commitments you have made to the Senate, this list is incomplete, because it only includes sources of more than \$5,000 in compensation for "personal services" for the current and the past two calendar years. For the purposes of fully understanding your recusal obligations, it is missing clients from which you did not receive compensation, clients that compensated you with less than \$5,000, and, most notably, clients of your law firm, Littler Mendelson, for which you did not provide personal services.

In order for the public to evaluate your ability to impartially apply the law, you will need to publicly disclose all potential conflicts created by your former clients and those of your firm. To help us understand the full extent of the conflicts of interest your record poses and the cases you will need to recuse yourself from, we respectfully request that you answer the following requests by November 24, 2017.

1. Please list all "former clients" including anyone for whom you served as an attorney or consultant "within the 2 years prior to the date" of your appointment to the NLRB pursuant to Executive Order 13770.

³ Basic obligation of public service. 5 CFR 2635.101. Online at: https://www.gpo.gov/fdsys/pkg/CFR-2005-title5-vol3/pdf/CFR-2005-title5-vol3-sec2635-101.pdf.

⁴ "Senator Warren Questions NLRB Nominee William Emanuel" [video]. Senator Elizabeth Warren. *Youtube* (July 17, 2017). Online at: https://www.youtube.com/watch?v=1fxyRKrJX6Q.

⁵ Emanuel, W. J. "Public Financial Disclosure Report (OGE Form 278e)." U.S. Office of Government Ethics (May 2, 2017).

^{6 &}quot;Your Sources of Compensation Exceeding \$5,000 in a Year (Nominee and New Entrant Reports Only)." Public Financial Disclosure Guide. U.S. Office of Government Ethics (accessed Nov. 3, 2017). Online at: https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Sources%20of%20Compensation%20Exceeding%20\$5,000%20in%20a%20Year%20(Nominee%20and%20New%20Entrant%20Reports%20Only)?opendocument.

- 2. Please list all cases in which Littler Mendelson represents or has represented a party (a) before the Board or its General Counsel (including all regional offices) or (b) in any courts in a proceeding in which the Board is or was also a party.
- 3. Per your commitment during your July 13, 2017 confirmation hearing to recuse yourself from "all cases involving [your] law firm," please provide a list of all current clients of Littler Mendelson.
- 4. Please confirm that you will recuse yourself from cases involving each of the companies listed in the attachment to this letter.

Thank you for your attention to this matter. We hope the answers to these questions will be a first step toward ensuring the public that you will be faithful to the law.

Sincerely,

Elizabeth Warren

United States Senator

Patty Murray

United States Senator

Sherrod Brown

United States Senator

Al Franken

United States Senator

hris Murphy

United States Senator

Richard Blumenthal

United States Senator

Cory A. Booker

United States Senator

Kirsten Gillibrand

United States Senator

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Bernard Sanders

United States Senator

Sheidon Whitehouse

United States Senator

United States Senator

Richard J. Durbin United States Senator <u>Attachment</u>: Open NLRB Cases in Which a Party is "Source of Compensation Exceeding \$5,000 in a Year," According to Member Emanuel's *Public Financial Disclosure Report* (OGE Form 278e)¹

Case Number		
01-RC-205981		
21-CA-182368		
20-CA-206203		
20-RC-205892		
16-CA-206932		
32-CA-166913		
32-CA-176171		
32-CA-196037		
32-CA-166909		
32-CA-164946		
32-CA-164936		
06-CB-208790		
04-CA-198944		
01-CA-158125		
01-CA-158144		
16-CA-086102		
12-CA-153478		
31-CA-205653		
01-CA-161183		
12-CA-154795		
01-CA-168468		
15-CA-204600		
12-CA-024979		
12-CA-062983		
10-CA-198732		
15-CA-150431		
15-CA-171184		
15-CA-175295		
15-CA-194155		
15-CA-145043		
15-CA-197194		
15-CA-203808		
15-CA-203802 15-CA-203818		
		15-CA-195326
15-CA-203813		
15-CA-203813 15-CA-190791		

¹ Emanuel, W. J. "Public Financial Disclosure Report (OGE Form 278e)." U.S. Office of Government Ethics (May 2, 2017).

	15-CA-201390			
	15-CA-201390 15-CA-203806			
Rite Aid	31-RD-001591			
Nie Aid	07-CA-206549			
	31-CA-20349			
	31-CA-207383			
	31-CA-205905			
	31-CA-200038			
	31-CA-200040			
	31-CA-205485			
	31-CA-206226			
	31-CA-200912			
	31-CA-205912 31-CA-205908			
	31-CB-207931			
	31-CA-187065			
	02-CA-160384			
	02-CA-189661			
	02-CA-189001 02-CA-182713			
Rural/Metro Corporation	19-RC-189869			
Kural/Medo Corporation	28-CA-165387			
	12-CA-189787			
	28-CA-164048			
	32-CA-104048 32-CA-204800			
	28-CA-208936			
	28-CA-206365			
	28-CA-200674			
Safeway	19-CA-189221			
Saleway	27-RC-206225			
	05-CA-209090			
	27-CA-207934			
	32-CA-204008			
	20-CB-206871			
	27-CA-203383			
	05-CB-206962			
	19-CA-182503			
	20-CB-203758			
	32-CA-206839			
	19-CB-009660			
	19-CB-192630			
	32-CA-207667			
	19-CA-208745			
	19-CR-208743 19-CB-178098			
	19-CB-178098 19-CB-168283			
	32-CB-207460			
	05-CB-207752			
	VJ-CD-2V//32			

	20-CB-201594		
Securitas Security Services	16-CA-176006		
	16-CA-183494		
	31-CA-088082		
	31-CA-072180		
	31-CA-088081		
	31-CA-072179		
	19-AC-206531		
	19-CA-191814	-	
Serta Simmons Bedding	10-CA-202722		
	27-CA-202059		
Uber Technologies, Inc.	20-CA-160717		
-	20-CA-181146		
	13-CA-174693		
	29-CA-177483		
	22-CA-178936		
	19-CA-199000		
	12-CA-173125		
	20-CA-160720		
	14-CA-158833		
	13-CA-163062		
	12-CA-181961		
	19-CA-205263		

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EXHIBIT C

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Verizon Communications Inc - Representation Analytics

	Firm	Filling Date	Case Name	Court	Case Type
1	Littler Mendelson PC	12/07/16	Caldwell v. Cellco Partnership	U.S. District Court for the Northern District of Georgia (11th Cir.)	Employment
2	Littler Mendelson PC	08/27/13	Vandergrift v. AOL et al	U.S. District Court for the District of Minnesota (8th Cir.)	ADA - Empl.
3	Littler Mendelson PC	04/04/13	Fields et al v. Cellco Partnership	U.S. District Court for the District of Minnesota (8th Cir.)	FLSA
4	Littler Mendelson PC	03/20/13	Penk v. Cellco Partnership	U.S. District Court for the District of Minnesota (8th Cir.)	FLSA
5 :	Littler Mendelson PC	03/14/13	Wawrzaszek et al v. Cellco Partnership	U.S. District Court for the District of Minnesota (8th Cir.)	FLSA

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction this service was made. I am over the age of eighteen years and not a party to the within action.

On January 10, 2018, I served the following documents in the manner described below:

MOTION TO INTERVENE OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL 15, LOCAL 159, AFL-CIO/MOTION FOR RECONSIDERATION

(BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

Charles Eberhardt

Perkins Coie LLP

On the following part(ies) in this action:

Ellen M. Kelman Thomas B. Buescher (ret.) The Kelman Buescher Firm 600 Grant Street, Suite 450 Denver, CO 80203 Phone: 303-333-7751

<u>ekelman@laborlawdenver.com</u> <u>tbuescher@laborlawdenver.com</u>

Attorneys for Society of Professional Engineering Employees in Aerospace, affiliated with International Federation of Professional & Technical Engineers, Local 2001

Irene H. Botero Counsel for the General Counsel National Labor Relations Board, Region 19 915 – 2nd Avenue, Room 2948 Seattle, WA 98174-1078 Irene.botero@nlrb.gov Attorneys for The Boeing Company

10885 N.E. Fourth Street, Suite 700

Belleview, WA 98004-5579

CEberhardt@perkinscoie.com

Ronald J. Hooks Regional Director National Labor Relations Board, Region 19 915 – 2nd Avenue, Room 2948 Seattle, WA 98174-1078 Ronald.hooks@nlrb.gov

Attorney for the National Labor Relations Board

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 10, 2018, at Alameda, California.

/s/ Karen Kempler
Karen Kempler

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on February 14, 2018, I electronically filed the foregoing **OPPOSITION TO MOTION TO EXTEND TIME FOR FILING RESPONDENT'S OPENING BRIEF** with the United States Court of Appeals, Ninth Circuit, by using the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Notice of Electronic Filing by the Court's CM/ECF system.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on February 14, 2018.

/s/ Karen Kempler Karen Kempler